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By: **Delegate James (Chairman, Joint Committee on Pensions)**

Introduced and read first time: February 4, 2004

Assigned to: Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Retirement and Pension System - Disability Retirement Appeals -**  
3 **Procedures**

4 FOR the purpose of ~~prohibiting the Board of Trustees of the State Retirement and~~  
5 ~~Pension System from holding certain hearings; authorizing either a member of~~  
6 ~~the State Retirement and Pension System or the Board of Trustees to appeal~~  
7 ~~certain decisions to the Office of Administrative Hearings; requiring the Board~~  
8 ~~of Trustees to delegate certain authority to the Office of Administrative~~  
9 ~~Hearings; requiring the Medical Board for the Board of Trustees to submit~~  
10 ~~certain recommendations to the Board of Trustees that include certain~~  
11 ~~information regarding individuals applying for an ordinary, accidental, or~~  
12 ~~special disability retirement allowance; authorizing the Board of Trustees to~~  
13 ~~adopt or reject certain recommendations of the Medical Board; requiring the~~  
14 ~~Board of Trustees to remand certain applications to the Medical Board for~~  
15 ~~reconsideration if the Board of Trustees does not adopt certain recommendations~~  
16 ~~by the Medical Board; authorizing certain individuals to appeal certain~~  
17 ~~decisions of the Board of Trustees to the Office of Administrative Hearings;~~  
18 ~~binding the Office of Administrative Hearings by certain legal precedents;~~  
19 ~~providing that certain individuals have to meet a certain level of burden of proof~~  
20 ~~in certain hearings; requiring the Office of Administrative Hearings to issue a~~  
21 ~~written ~~finding~~ findings of fact and conclusions of law setting forth certain~~  
22 ~~reasons; prohibiting the Office of Administrative Hearings from deciding certain~~  
23 ~~issues; requiring the Office of Administrative Hearings to remand certain~~  
24 ~~appeals to the medical board of the State Retirement and Pension System;~~  
25 ~~authorizing the medical board to revise or uphold certain decisions; requiring~~  
26 ~~the Office of Administrative Hearings to adopt certain decisions of the medical~~  
27 ~~board as final decisions; requiring that certain final decisions of the Office of~~  
28 ~~Administrative Hearings be in accordance with certain provisions of the State~~

1 Government Article; requiring that certain final decisions of the Office of  
 2 Administrative Hearings are the final administrative appeals for those cases;  
 3 authorizing either a member or retiree of the State Retirement and Pension  
 4 System or the Board of Trustees to seek further judicial review of certain  
 5 decisions of the Office of Administrative Hearings in accordance with certain  
 6 provisions of the State Government Article; requiring the Board of Trustees to  
 7 adopt certain regulations; requiring the Board of Trustees to submit a certain  
 8 annual report; providing for the application of this Act; defining a certain term;  
 9 and generally relating to the procedures governing disability retirement appeals  
 10 for the State Retirement and Pension System.

11 BY repealing and reenacting, with amendments,  
 12 Article - State Personnel and Pensions  
 13 Section 21-111  
 14 Annotated Code of Maryland  
 15 (1997 Replacement Volume and 2003 Supplement)

16 BY repealing and reenacting, without amendments,  
 17 Article - State Personnel and Pensions  
 18 Section 21-126  
 19 Annotated Code of Maryland  
 20 (1997 Replacement Volume and 2003 Supplement)

21 BY adding to  
 22 Article - State Personnel and Pensions  
 23 Section 21-701 through ~~21-703~~ 21-704, inclusive, to be under the new subtitle  
 24 "Subtitle 7. Disability Hearings"  
 25 Annotated Code of Maryland  
 26 (1997 Replacement Volume and 2003 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 28 MARYLAND, That the Laws of Maryland read as follows:

29 **Article - State Personnel and Pensions**

30 21-111.

31 (a) (1) As the Board of Trustees considers necessary to properly administer  
 32 and enforce this Division II or regulations adopted under this Division II, the Board of  
 33 Trustees may:

34 (i) require any officer or unit of the State or of a political  
 35 subdivision of the State to furnish the Board of Trustees without charge with a  
 36 certified copy of any record or paper in the official custody of the officer or unit; and

37 (ii) issue a summons, subpoena, or other process, for the attendance  
 38 of witnesses and the production of documents before the Board of Trustees.

1 (2) The Board of Trustees, or any trustee on the Board of Trustees, may  
2 administer an oath to a witness who appears before the Board of Trustees.

3 (b) (1) In addition to any hearing that Title 10 of the State Government  
4 Article requires, AND EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION,  
5 the Board of Trustees may hold hearings as necessary to perform its duties.

6 (2) The hearings are governed by regulations of the Board of Trustees.

7 (3) The Board of Trustees is not bound by technical rules of evidence.

8 (4) ~~If the Board of Trustees approves an application for disability  
9 retirement on behalf of a State police officer under § 2-415(b) of the Public Safety  
10 Article, the Board of Trustees shall hold a hearing unless the officer waives the  
11 hearing in writing } THE BOARD OF TRUSTEES MAY NOT HOLD A HEARING  
12 REGARDING AN APPEAL OF A DECISION MADE BY THE OFFICE OF ADMINISTRATIVE  
13 HEARINGS TO GRANT OR DENY A DISABILITY RETIREMENT.~~

14 (C) THE BOARD OF TRUSTEES SHALL DELEGATE TO THE OFFICE OF  
15 ADMINISTRATIVE HEARINGS THE AUTHORITY TO CONDUCT A HEARING AND ISSUE  
16 THE FINAL ADMINISTRATIVE DECISION IN AN APPEAL OF A DENIAL OF A DISABILITY  
17 RETIREMENT ALLOWANCE.

18 21-126.

19 (a) The Board of Trustees shall establish one or more medical boards.

20 (b) (1) Each medical board consists of three members and not more than  
21 three alternates.

22 (2) Each medical board member and alternate shall be a physician who  
23 is not eligible to be a member of a State system.

24 (3) The Board of Trustees shall appoint the medical board members and  
25 any alternates.

26 (4) In the absence of a medical board member, an alternate may serve on  
27 a medical board.

28 (c) Two members of a medical board are a quorum for the conduct of business.

29 (d) A medical board shall:

30 (1) arrange for and approve all medical examinations required under  
31 this Division II;

32 (2) investigate all essential certificates and statements by or on behalf of  
33 a member concerning the application of the member for disability Retirement; and

1 (3) submit written reports to the Board of Trustees, with conclusions and  
 2 recommendations, on all matters that the Board of Trustees refers to the medical  
 3 board.

4 (e) The Board of Trustees may employ other physicians to report on special  
 5 cases.

6 SUBTITLE 7. DISABILITY HEARINGS.

7 21-701.

8 IN THIS SUBTITLE, "OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE  
 9 HEARINGS.

10 21-702.

11 (A) ~~IF EITHER A MEMBER OR THE BOARD OF TRUSTEES IS AGGRIEVED AS A~~  
 12 ~~RESULT OF THE FINAL DETERMINATION OF THE MEDICAL BOARD UNDER § 21-126 OF~~  
 13 ~~THIS TITLE, THEN THE AGGRIEVED PARTY MAY APPEAL THE DECISION TO THE~~  
 14 ~~OFFICE~~

15 (1) THE MEDICAL BOARD UNDER § 21-126 OF THIS TITLE SHALL SUBMIT  
 16 A DISABILITY REPORT TO THE BOARD OF TRUSTEES THAT INCLUDES THE NAME OF  
 17 EACH INDIVIDUAL WHO HAS APPLIED FOR AN ORDINARY, ACCIDENTAL, OR SPECIAL  
 18 DISABILITY RETIREMENT ALLOWANCE UNDER TITLE 29, SUBTITLE 1 OF THIS  
 19 ARTICLE AND WHO:

20 (I) IS ELIGIBLE TO RECEIVE AN ORDINARY, ACCIDENTAL, OR  
 21 SPECIAL DISABILITY RETIREMENT ALLOWANCE;

22 (II) IS ELIGIBLE TO RECEIVE AN ORDINARY DISABILITY  
 23 RETIREMENT ALLOWANCE BUT WHO IS NOT ELIGIBLE TO RECEIVE AN ACCIDENTAL  
 24 OR SPECIAL DISABILITY RETIREMENT ALLOWANCE; OR

25 (III) IS NOT ELIGIBLE TO RECEIVE AN ORDINARY, ACCIDENTAL, OR  
 26 SPECIAL DISABILITY ALLOWANCE.

27 (2) (I) THE BOARD OF TRUSTEES MAY ADOPT THE  
 28 RECOMMENDATIONS OF THE MEDICAL BOARD UNDER PARAGRAPH (1) OF THIS  
 29 SUBSECTION.

30 (II) IF THE BOARD OF TRUSTEES DOES NOT ADOPT THE  
 31 RECOMMENDATIONS OF THE MEDICAL BOARD UNDER PARAGRAPH (1) OF THIS  
 32 SUBSECTION, THE BOARD OF TRUSTEES SHALL REMAND THE INDIVIDUAL'S  
 33 APPLICATION FOR RECONSIDERATION BY THE MEDICAL BOARD.

34 (B) (1) IF A MEMBER OR RETIREE IS AGGRIEVED AS A RESULT OF A  
 35 DECISION OF THE BOARD OF TRUSTEES TO ADOPT A RECOMMENDATION OF THE  
 36 MEDICAL BOARD THAT RESULTS IN A DENIAL OF A DISABILITY RETIREMENT

1 ALLOWANCE, THE MEMBER OR RETIREE MAY APPEAL THE DECISION OF THE BOARD  
2 OF TRUSTEES.

3           (2)    (I)    AN APPEAL UNDER PARAGRAPH (1) OF THIS SUBSECTION  
4 SHALL BE FILED WITH THE BOARD OF TRUSTEES.

5                    (II)   THE BOARD OF TRUSTEES SHALL FORWARD THE APPEAL TO  
6 THE OFFICE.

7    (C)    (1)    THE OFFICE SHALL DISPOSE OF THE APPEAL OR CONDUCT A  
8 HEARING AND ISSUE A DECISION IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF  
9 THE STATE GOVERNMENT ARTICLE.

10           (2)    THE OFFICE IS BOUND BY ANY REGULATION, DECLARATORY  
11 RULING, PRIOR ADJUDICATION, OR OTHER SETTLED PREEXISTING POLICY OF THE  
12 BOARD OF TRUSTEES.

13           (3)    THE PARTY REQUESTING THE APPEAL HAS THE BURDEN OF PROOF  
14 BY A PREPONDERANCE OF THE EVIDENCE.

15    ~~(B)~~   (D)    THE OFFICE SHALL ISSUE A WRITTEN FINDING OF FACT WRITTEN  
16 FINDINGS OF FACT AND CONCLUSIONS OF LAW SETTING FORTH THE REASONS FOR  
17 THE FINAL DECISION REGARDING AN APPEAL UNDER SUBSECTION ~~(A)~~ (B) OF THIS  
18 SECTION.

19    (C)    ~~THE FINAL DECISION OF THE OFFICE MAY NOT INCLUDE DECISIONS ON~~  
20 ~~THE FOLLOWING:~~

21           (1)    ~~WHETHER THE MEMBER IS DISABLED;~~

22           (2)    ~~WHETHER A MEMBER'S FAILURE TO SUBMIT A DISABILITY FORM~~  
23 ~~DURING THE FILING PERIOD PRESCRIBED BY THE BOARD OF TRUSTEES WAS~~  
24 ~~ATTRIBUTABLE SOLELY TO THE MENTAL OR PHYSICAL INCAPACITY OF THE~~  
25 ~~APPLICANT DURING THE FILING PERIOD; OR~~

26           (3)    ~~WHETHER A MEMBER'S FAILURE TO SUBMIT A DISABILITY FORM~~  
27 ~~DURING THE REQUIRED 5-YEAR PERIOD WAS ATTRIBUTABLE TO PHYSICAL OR~~  
28 ~~MENTAL CONDITIONS THAT RESULTED DIRECTLY FROM THE EVENT OR ACT OF DUTY~~  
29 ~~THAT CAUSED THE DISABILITY.~~

30    ~~(D)~~   (1)    ~~THE OFFICE WILL REMAND ANY APPEAL THAT IS BASED ON THE~~  
31 ~~ISSUES LISTED IN SUBSECTION (C) OF THIS SECTION TO THE MEDICAL BOARD FOR~~  
32 ~~FURTHER REVIEW.~~

33           (2)    ~~(1)    AFTER RECONSIDERING THE APPEAL, THE MEDICAL BOARD~~  
34 ~~MAY EITHER UPHOLD THE MEDICAL BOARD'S ORIGINAL DECISION OR ISSUE A~~  
35 ~~REVISED DECISION.~~

36                    (II)   ~~A DECISION ISSUED BY THE MEDICAL BOARD UNDER THIS~~  
37 ~~PARAGRAPH SHALL BE ADOPTED BY THE OFFICE AS A FINAL DECISION.~~

1 (E) (1) A FINAL DECISION ISSUED UNDER THIS SECTION BY THE OFFICE  
2 SHALL BE IN ACCORDANCE WITH § 10-221 OF THE STATE GOVERNMENT ARTICLE AND  
3 IS THE FINAL ADMINISTRATIVE DECISION OF THE APPEAL.

4 (2) THE FINAL ADMINISTRATIVE DECISION SHALL INCLUDE ANY  
5 DETERMINATION NECESSARY REGARDING A RIGHT TO BENEFITS UNDER TITLE 29,  
6 SUBTITLE 1 OF THIS ARTICLE.

7 21-703.

8 IF EITHER A MEMBER, RETIREE, OR THE BOARD OF TRUSTEES IS AGGRIEVED AS  
9 A RESULT OF A FINAL DECISION OF THE OFFICE UNDER § 21-702, THEN THE  
10 AGGRIEVED PARTY IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH §  
11 10-222 OF THE STATE GOVERNMENT ARTICLE.

12 21-704.

13 THE BOARD OF TRUSTEES SHALL ADOPT REGULATIONS TO ADMINISTER THE  
14 PROVISIONS OF THIS SUBTITLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Board of Trustees for  
16 the State Retirement and Pension System shall submit a report by September 1 of  
17 each year to the Joint Committee on Pensions that includes:

18 (1) the number of recommendations made by the Medical Board that are  
19 remanded back by the Board of Trustees for further review;

20 (2) the number of applicants that receive or are denied disability  
21 retirement allowances by the Board of Trustees;

22 (3) the number of appeals taken to the Office of Administrative  
23 Hearings;

24 (4) the results of each appeal to the Office of Administrative Hearings;

25 (5) the number of appeals taken to the Circuit Court; and

26 (6) the results of each appeal taken to the Circuit Court.

27 ~~SECTION 3.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall only  
28 apply to any decision made by the medical board of the State Retirement and Pension  
29 System under § 21-126 of the State Personnel and Pensions Article ~~the denial of a~~  
30 disability retirement allowance that is appealed on or after July 1, 2004.

31 ~~SECTION 4.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take  
32 effect July 1, 2004.

